

Message Text

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TAGS:PFOR, SNAR, SG, CPRS, AF, FR

SUBJECT:UNITED STATES V. ORSINI

REF: PARIS 5239

1. WHEN ASKED BY CONOFF ABOUT LEGAL BASIS OF FRENCH REFUSAL (REFTEL) TO ALLOW DEFENSE ATTORNEY GALINA AND AUSA DE PETRIS TO TAKE DEPOSITIONS IN FRANCE RE ORSINI CASE, JUSTICE MINISTRY OFFICIAL (FROMONT) CITED FRENCH CODE DE PROCEDURE PENALE.

2. PER TITLE III, SECTION IV, ARTICLES 101 - 113 OF ABOVE CODE, THE EXAMINING MAGISTRATE NORMALLY INTERROGATES WITNESSES IN CRIMINAL CASES IN FRANCE BUT MAGISTRATES AND JUDICIAL POLICE OFFICERS CAN BE AUTHORIZED BY "COMMISSIONS ROGATOIRES" TO TAKE EVIDENCE IN OTHER JUDICIAL DISTRICTS WITHIN FRANCE. TITLE III, SECTION VIII, ARTICLES 151 - 155 OUTLINE PROCEDURES FOR COMMISSIONS ROGATOIRES. CONCERNING EXECUTION OF COMMISSIONS ROGATOIRES FROM FOREIGN JUDICIAL AUTHORITIES, FOOTNOTE TO ARTICLE 155 REFERS TO LAW OF MARCH 10, 1927 ON EXTRADITION OF FOREIGNERS, TEXT OF WHICH IS INCLUDED IN CODE UNDER ARTICLE 696.

3. THE 1927 LAW ON EXTRADITION INCLUDES SEVERAL ARTICLES UNDER TITLE IV CONCERNING PROCEDURES RELATED TO EXTRA-
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DITION. OF THESE, ARTICLE 30 PROVIDES, FOR PUBLIC

PROSECUTION OF NON-POLITICAL CRIMINAL CASES ("EN CAS DE POURSUITES REPRESSIVES NON POLITIQUES"), THAT LETTERS ROGATORY FROM FOREIGN AUTHORITIES BE RECEIVED BY DIPLOMATIC CHANNELS AND TRANSMITTED WITH FILE BY FRENCH FOREIGN MINISTRY TO JUSTICE MINISTRY FOR APPROPRIATE ACTION. ARTICLE 30 ALSO PROVIDES IN URGENT CASES FOR DIRECT COMMUNICATION OF LETTERS ROGATORY BETWEEN JUDICIAL AUTHORITIES BUT THE FOREIGN GOVERNMENT MUST ADVISE FRENCH GOVERNMENT BY DIPLOMATIC CHANNELS OF THIS ACTION OR REQUEST WILL NOT BE FULFILLED.

4. CONSULAR CONVENTION BETWEEN UNITED STATES AND FRANCE SIGNED JULY 18, 1966 AND ENTERED INTO FORCE JANUARY 7, 1968 (TIAS 6389). ARTICLE 30, PARAGRAPH THREE OF CONVENTION PERMITS CONSULAR OFFICERS "TO TAKE ANY EVIDENCE IN COMMERCIAL AND CIVIL MATTERS ON BEHALF OF THE COURTS OF THE SENDING STATE, VOLUNTARILY GIVEN BY ANY PERSON IN THE RECEIVING STATE, AND ADMINISTER OATHS TO SUCH PERSONS, IN ACCORDANCE WITH THE LAWS OF THE SENDING STATE." THERE IS NO MENTION IN CONSULAR CONVENTION OF ANY CONSULAR ROLE IN TAKING OF EVIDENCE IN CRIMINAL CASES, I.E., IN "POURSUITES REPRESSIVES."

5. CONSULAR CONVENTION IS CONSISTENT WITH THE HAGUE CONVENTION OF MARCH 18, 1970, SUBSCRIBED TO BY BOTH FRANCE AND UNITED STATES (TIAS 7444), ON TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS. IN ADDITION TO AUTHORIZING LETTERS ROGATORY ("LETTERS OF REQUEST" IN TEXT), CONVENTION PROVIDES FOR TAKING OF EVIDENCE IN CIVIL AND COMMERCIAL MATTERS BY DIPLOMATIC AND CONSULAR OFFICERS AND BY COMMISSIONERS BUT IS SILENT WITH RESPECT TO CRIMINAL CASES.

6. IN ABSENCE OF BILATERAL AGREEMENT OR INTERNATIONAL CONVENTION GOVERNING TAKING OF EVIDENCE IN CRIMINAL CASES (OR IN PROCEDURAL STAGE OF MATTER WHICH MAY BE BROUGHT TO TRIAL AS CRIMINAL CASE), WE SEE NO BASIS FOR TAKING EXCEPTION TO FRENCH POSITION IN ORSINI CASE. IF OUR UNDERSTANDING OF THIS MATTER DOES NOT SQUARE WITH DEPARTMENT'S, PLEASE ADVISE.
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